

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Indefinite
Suspension of the License of Jesse
Cauwels to Provide Family Child Care
under Minnesota Rules, Parts
9502.0300 to 9502.0445

FINDINGS OF FACT,
CONCLUSIONS,
AND RECOMMENDATION

A hearing was held in this matter before Administrative Law Judge Steve M. Mihalchick on October 27, 2005 at approximately 9:30 a.m., at the Lyon County Government Center, Conference Room 7, 607 West Main Street, Marshall, Minnesota, pursuant to a Notice of and Order for Hearing from the Division of Licensing, Department of Human Services. The hearing concluded on October 27, 2005. The hearing record closed at the conclusion of the hearing.

Trisha Zimmer, Assistant Lyon County Attorney, 607 West Main Street, Marshall, MN 56258, appeared on behalf of the Department of Human Services ("Department") and Lincoln, Lyon and Murray Human Services ("County"). The Licensee, Jesse Cauwels, 400 Williams Street, Marshall, MN 56258, appeared on his own behalf, without counsel.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Goodno, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge

within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATEMENT OF ISSUES

1. Has the Licensee complied with the statute and rules governing his daycare, specifically, Minn. Stat. § 245C.03 (background study), Minn. Rule 9502.0325 (minimum levels of care), Minn. Rule 9502.0365 (use of substitutes), Minn. Rule 9502.0315, subp. 29a (supervision), and Minn. Rule 9502.0367 (capacity and age ratios)?

2. If not, does the severity, chronicity and repetition of the violations support an indefinite suspension of the license?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Licensee is licensed by the Department to provide family child care. He was first licensed in December 2003. The Licensee has a C2 family child care license.¹ Under a C2 license, a daycare provider is limited to three children under two years of age and no more than two of those children can be infants.²

2. Rebecca Sik, Child Care Licensing Social Worker with the County, is responsible for assuring that licensees and applicants are in compliance with the standards governing family child care.³

3. Up to July 31, 2004, Licensee conducted licensed daycare from his residence on Kendall Street. At that time, Licensee moved to Dano Circle. The move required relicensure of the new location. Due to the lack of a fire marshal inspection, Sik explained that Licensee could only conduct legal nonlicensed (LNL) daycare. LNL daycare was limited in the number of children and that children unrelated to the provider could only be from one family.⁴

¹ Testimony of Cauwels.

² Ex. 1, Order of Indefinite Suspension

³ Testimony of Sik. The County operates its social services function jointly as Lincoln, Lyon and Murray Human Services.

⁴ Testimony of Sik.

4. On October 5, 2004, Sik conducted a drop-in visit at Cauwels' home. At that time, he was operating LNL daycare. Six children from at least three different families were in Licensee's care on that date.⁵ Sik told Cauwels that having too many children or children from too many families could be considered fraud on the child care assistance program.⁶

5. On October 6, 2004, Sik and Marilyn Opdahl, a Licensing Case Aide, telephoned Cauwels about the number of children in his LNL daycare. Licensee's grandmother, Pat Cauwels, answered and said that Jesse was not in. Sik and Opdahl went to visit his home. Three children were in Cauwels' care on that date. Children from one too many families were in care at the time of the visit.⁷ Pat Cauwels did not have her background check completed to be approved as a caregiver⁸

6. On October 20, 2004, Sik visited Cauwels' residence at Dano Circle for a relicensure visit. The fire marshal had approved the location, with the requirement that the garage be available as an emergency exit. Sik observed that Licensee lacked required immunization records for some of the children in care. She observed two infants were sleeping in car seats. Cauwels did not have cribs set up at the time to provide approved sleeping arrangements for the infants.⁹

7. Based on those observations, Opdahl issued a correction order identifying the incomplete files as a violation of Minn. Rule 9502.0405 and the use of car seats for infant sleeping as a violation of Minn. Rule 9502.0425.¹⁰ The license was renewed as a C2. Under that category, the provider is limited to three children under two years of age and no more than two of those children can be infants.¹¹

8. On March 2, 2005, Sik and Opdahl saw a newspaper report that Licensee had been cited for driving without insurance. His auto insurance had lapsed. Since daycare children were occasionally transported in his vehicle, Opdahl treated the insurance situation at a licensing issue. On March 3, 2005, she issued a correction order citing Minn. Rule 9502.0435, subp. 9.C. (transportation of children) and indicated that Licensee was not to transport daycare children until appropriate insurance was reinstated. Licensee had obtained the required insurance coverage on March 2, 2005.¹²

⁵ Ex. 1, Dictation, 10-6-04.

⁶ Testimony of Sik.

⁷ Ex. 1, Dictation, 10-6-04.

⁸ Ex. 1, Dictation, 10-6-04.

⁹ Ex. 1, Dictation, 10-6-04.

¹⁰ Ex. 1, Complaints & Correction Orders, 11-15-04 (second notice).

¹¹ Ex. 1, Order of Indefinite Suspension

¹² Testimony of Sik ; Ex. 1, Complaints & Correction Orders, 3-3-05 (with insurance attachments).

9. On March 30, 2005, Sik, accompanied by an intern with the County, conducted a drop-in visit at Licensee's location. Licensee had three infants in care. One infant was sleeping on a couch. Another child, approximately two years of age, was in a mesh playpen. Sik believed that the width of the rail pattern and fit of the mattress of the single crib in use in the daycare did not meet code or the applicable regulations. Another adult was also present and providing care for daycare children. The changing area lacked a washable surface.¹³ Sik told Licensee that he needed one crib for each infant and that any crib in use must meet the regulations. She also told Licensee that he needed to have his roommate complete a background check.¹⁴

10. Based on those observations, Opdahl issued a correction order identifying the improper age distribution as a violation of Minn. Rule 9502.0367, the lack of a suitable changing area a violation of Minn. Rule 9502.0435, the lack of a proper crib and use of a mesh playpen without a variance to be violations of Minn. Rule 9502.0425, and the lack of a background check and other required documentation to be a violation of Minn. Rules 9502.0315 and .0375 and Minn. Stat. § 245A.144.¹⁵ In his response, Licensee explained that the adult was a daycare parent. Use of the cloth cover for the changing pad was discontinued. A variance for an additional infant in care was applied for and Licensee indicated that new cribs would be purchased.¹⁶

11. On May 26, 2005, Sik and Opdahl conducted a drop-in visit at Licensee's daycare. An infant was sleeping on a chair with a toddler sleeping on the outside of the infant (where an ottoman was placed against the chair to provide adequate room). Two mesh playpens were present, but only one was in use by a toddler. Licensee had not obtained a mesh playpen variance from the Department. Licensee acknowledged that he did not have cribs, as required by the sleeping accommodations requirements. Licensee had corrected the changing area violation from the prior visit by using only the washable surface.¹⁷ Sik reminded Licensee of the need for a crib for each infant and that any crib in use must meet the regulations. She also expressed that the failure to use appropriate cribs was a serious violation.¹⁸

12. Sik and Opdahl discussed Licensee's ongoing license status and considered whether issuance of a conditional license or imposing a temporary immediate suspension was the appropriate response to the ongoing rule violations. They concluded that a temporary immediate suspension was appropriate.¹⁹

¹³ Ex. 1, Dictation, 3-31-05. The changing surface was washable vinyl, but Licensee used a soft covering for the changing table.

¹⁴ Testimony of Sik; Ex. 1, Dictation, 3-31-05.

¹⁵ Ex. 1, Complaints & Correction Orders, 5-4-05.

¹⁶ Testimony of Sik; Ex. 1, Complaints & Correction Orders, 5-4-05.

¹⁷ Testimony of Sik; Ex. 1, Dictation, 5-26-05.

¹⁸ Testimony of Sik; Ex. 1, Dictation, 5-26-05.

¹⁹ Testimony of Sik; Ex. 1, Dictation, 5-26-05.

13. On May 27, 2005, Sik and Opdahl returned to Licensee's daycare. Licensee still lacked the required cribs. A correction order was issued for the violation. Also on May 27, 2005, the County recommended to the Department that a temporary immediate suspension be imposed on Licensee for the ongoing capacity and sleeping standard violations.²⁰ On June 9, 2005, the County supplemented the information submitted to the Department regarding the recommended suspension.²¹

14. On June 28, 2005, the Department issued an Order of Indefinite Suspension (Suspension Order) regarding Licensee's daycare. The Suspension Order was based upon the documented violations of Minn. Stat. § 245C.03 (background study), Minn. Rule 9502.0325 (minimum levels of care), Minn. Rule 9502.0365 (use of substitutes), Minn. Rule 9502.0315, subp. 29a (supervision), and Minn. Rule 9502.0367 (capacity and age ratios).²²

15. The Suspension Order included six items that were required before Licensee could resume providing daycare. Obtaining appropriate cribs and having them inspected, presenting a plan of supervision and substitutes, submitting required paperwork for substitutes, obtaining background checks for other adults in the daycare, and attending additional training sessions are among the items required prior to reinstatement of the license.²³

16. Licensee appealed the suspension on July 15, 2005. The specific items identified in the Suspension Order were addressed in the appeal letter as either completed or in progress.²⁴

17. Licensee moved from his residence at Dano Circle to Williams Street in August 2005. Some daycare parents had not been informed of the move and they called the County to determine where Licensee was now located.²⁵ After some confusion as to whether the Suspension Order affected the new daycare, the County conducted the necessary inspections for relicensure.²⁶

18. At the hearing, the County expressed concern with unauthorized caregivers being present in the daycare. Additionally, concerns were expressed about Licensee providing in daycare when he initially moved from Dano Circle to Williams Street when the new location had not yet been approved. In conjunction with the move, Licensee had indicated that no pets would be in the home, but pets were present at the new location without notifying the County. The County also identified concerns that Licensee has not updated his client lists

²⁰ Ex. 1, Jesse's Appeal, County Letter, 5-27-05.

²¹ Ex. 1, Jesse's Appeal, County Letter, 6-9-05.

²² Ex. 1, Order of Indefinite Suspension.

²³ *Id.*

²⁴ Ex. 1, Jesse's Appeal, Cauwel Letter, 7-15-05.

²⁵ Testimony of Sik. The record is silent as to whether these were regular daycare families or drop-in referrals.

²⁶ See Ex. 1, Emails and Misc. Correspondence, County Letter, 9-1-05.

in a timely fashion. Licensee had not obtained a variance for mesh playpens by the date of the hearing.²⁷ The County did not rely on these concerns to support the imposition of an indefinite suspension, but wanted them addressed as part of any reinstatement of the license and ongoing compliance by the Licensee.

19. As of the date of the hearing, Licensee was in compliance with the crib condition, the requirement for orientation and some additional training for infant care. Licensee remains noncompliant with the training requirements from his substitute caregiver, some additional training for infant care, and the background study requirements for a person who will be in the home during daycare hours. Licensee submitted a plan for backup and substitutes which is under review by the County.²⁸

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services are authorized to consider the appeal of an indefinite suspension, pursuant to Minn. Stat. §§ 245A.07, subd. 3(a), and 14.50.

2. Licensee received due, proper and timely notice of the basis for the agency's decision, and of the time and place of the hearing. This matter is properly before the Commissioner and the Administrative Law Judge. The Department has fulfilled all procedural requirements of law and rule.

3. The Department must demonstrate reasonable cause for the alleged violations by submitting evidence to substantiate the allegations that the license holder failed to comply with applicable laws or rules. If the Department demonstrates reasonable cause, the burden of proof shifts to the license holder to demonstrate by a preponderance of the evidence that the license holder was in full compliance with those laws or rules that the Department claims were violated.²⁹

4. The Department has demonstrated reasonable cause that the Licensee has failed to comply with standards regarding capacity and distribution, proper use of substitutes, minimum levels of care and supervision, and required background studies for caregivers. Therefore, the burden of proof is on Licensee to demonstrate compliance with those standards.

5. The Licensee failed to demonstrate compliance with the statutes and rules governing his daycare, specifically, Minn. Stat. § 245C.03 (background study), Minn. Rule 9502.0325 (minimum levels of care), Minn. Rule 9502.0365

²⁷ Testimony of Sik.

²⁸ Testimony of Cauwels and Sik.

²⁹ Minn. Stat. § 245A.08, subd. 3(a).

(use of substitutes), Minn. Rule 9502.0315, subp. 29a (supervision), and Minn. Rule 9502.0367 (capacity and age ratios).

6. The Department has demonstrated that an indefinite suspension takes into account “the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program,” and “the facts, conditions or circumstances concerning the program’s operation, the well-being of persons served by the program, [and] available consumer evaluations of the program...,” as required by Minn. Stat. §§ 245A.04, subd. 6, and 245A.07, subd. 1.

Based upon the foregoing Conclusions, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED That the Order imposing an indefinite suspension be AFFIRMED

Dated this 28th day of November, 2005

/s/ Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

Tape Recorded (one tape) – No Transcript Prepared

MEMORANDUM

The Department has shown that an indefinite suspension is an appropriate sanction for the demonstrated violations in this matter. Licensee has acknowledged that license violations have occurred. He has also made some efforts to bring his daycare into compliance. However, he has never come into full compliance and his efforts are somewhat half-hearted.

It is reasonable to suspend the license until Licensee has demonstrated compliance with all the standards identified in the Suspension Order and until the County recommends that the license be reinstated. Therefore, the ALJ has recommended that the indefinite suspension be AFFIRMED.

S.M.M.